

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

IBI ARMORED SERVICES, INC.  
Employer

and

Case No. 29-RC-250868

SPECIAL AND SUPERIOR OFFICERS  
BENEVOLENT ASSOCIATION  
Petitioner

**DECISION AND DIRECTION OF SECOND ELECTION**

Pursuant to Section 102.69 of the Board's Rules, I have considered the exceptions filed by IBI Armored Services, Inc., herein called the Employer, to the Hearing Officer's report recommending disposition of an objection to the election held on December 6, 2019. The election was conducted pursuant to a Stipulated Election Agreement. The Tally of Ballots shows 58 eligible voters, 23 cast votes for Special and Superior Officers Benevolent Association (herein called the Petitioner), 23 cast votes against the Petitioner, and there were 3 determinative challenged ballots. The Petitioner timely filed two objections to conduct affecting the results of the election.

On December 20, 2019, the undersigned issued and served on the parties a Report on Challenges and Objections and Notice of Hearing. The December 20, 2019 Report directed that a hearing be held on the Petitioner's second objection and the remaining objection was overruled. With regard to the determinative challenged ballots, the December 20, 2019 Report directed that a hearing be held for the purpose of receiving evidence to resolve the issues raised by the challenges to the eligibility of Chacko Thomas, Paul Saramma and Baljumon Thomas. Pursuant to the December 20, 2019 Report, a hearing was held before a Hearing Officer on January 15, 2020.

On January 31, 2020, the Hearing Officer issued a Report in which she recommended sustaining the Petitioner's second objection, which asserted that the Employer failed to post the Notices of Election.<sup>1</sup> The Employer filed exceptions with me to the Hearing Officer's findings and recommendations related to the Petitioner's second objection. The Employer's filing contained evidence to rebut certain testimony that was received at the January 15, 2020 hearing and essentially disputes the Hearing Officer's findings of fact and credibility resolutions.

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<sup>1</sup> The Hearing Officer did not make a recommendation regarding the determinative challenges in this case.

I find that the Hearing Officer's rulings made at hearing are free from prejudicial error and are hereby affirmed. I have reviewed and considered the evidence and the arguments presented and, as discussed herein, I agree with the Hearing Officer that the Petitioner's second objection should be sustained. Accordingly, I adopt the recommendations of the Hearing Officer in her Report, set aside the results of the December 6, 2019 election, and direct that a new election be held.

### **The Petitioner's Second Objection**

In its second objection, the Petitioner alleges that the Employer failed to post the Notices of Election. The Hearing Officer found the testimony of Vincent Clark<sup>2</sup> and Union organizer Arturo Urena credible in recommending that the objection be sustained.

As noted by the Hearing Officer, the election in this case was scheduled for Friday, December 6, 2019. The Board's Rules and Regulations provide that the Notice of Election must be posted for 3 full working days in advance of an election. Accordingly, Notices of Election had to be posted by 12:01 a.m. on Tuesday, December 3, 2019. Further, as noted in Section 102.67 (k) of the Board's Rules and Regulations, in all cases, the notices shall remain posted until the end of the election.

The Hearing Officer found that the Employer did not properly post the Notices of Election prior to the election as required by the Board's Rules and Regulations. In this regard, she credited the testimony of Union representative Urena that the Notice of Election was not properly posted in the loading dock area and that he heard a representative of the Employer identified as Mau state that the Notices of Election were not posted anywhere else in the Employer's facility. The Hearing Officer also found that there was no evidence that the Notice of Election was posted anywhere else in the Employer's facility. In this regard, it is noted that both Union representative Urena and Vincent Clark testified that on December 6, 2019, the day of the election, they were in the Employer's facility and did not see the Notice of Election posted near the time clock before the election.

### **The Employer's Exceptions**

In its exceptions, the Employer submits evidence to rebut certain testimony of Union witnesses Vincent Clark and Arturo Urena elicited at the hearing and referred to by the Hearing Officer in her January 31, 2020 Report. In this regard, the Employer contends that Vincent Clark did not work on December 2, 3, or 4, 2019. Thus, the Employer contends that Clark's testimony that he did not see the Notice of Election posted by the time clock on December 3, 2019 is not factual as he did not work and was not in the Employer's facility on December 3, 2019. The

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<sup>2</sup> While the Employer in its exceptions states that Clark resigned on December 27, 2019, it is undisputed that Clark was an employee on the day of the election.

Employer provided payroll and time clock records in support of its contention as to the dates Clark worked. These payroll records indicate that Clark worked on Thursday, December 4 and Friday December 6, 2019. Further the Employer contends that over thirty employees, a majority of which were members of the bargaining unit, signed a petition stating that they saw the Notice of Election posted above the time clock at least 3 days prior to the December 6, 2019 election.<sup>3</sup>

The Employer also contends that Manu Thomas denies the testimony of Arturo Urena that on the day of the election, Manu Thomas stated the only place where the Notice of Election was posted was in the loading dock area. In this regard the Employer submitted a signed statement in which Manu Thomas states that he personally posted all four pages of the Notices of Election near the Employer's time clock.<sup>4</sup>

Finally, the Employer essentially contends that the evidence suggests Clark is a disgruntled employee and suggests that his testimony is unreliable. In this regard, the Employer contends that Clark was not an employee when he testified at the hearing as he resigned on December 27, 2019, a date prior to the January 15, 2020 hearing. Further, the Employer contends that according to Employer election observer Alexis J. DeIeso, Clark appeared at the voting place on the day of the election and stated that he was not going to vote because he did not have all the information that he required and the Union representatives hadn't answered his questions.

### **Analysis**

As described in the Hearing Officer's Report, the Employer failed to appear at the hearing although it admittedly received notice of the hearing and the Hearing Officer denied the Employer's belated request to adjourn the hearing. The Employer did not appeal the Hearing Officer's denial of its request to adjourn the hearing.

The Employer's appeal asserts facts that are not part of the formal record in this proceeding. The Employer does not claim that the evidence it now offers was newly discovered or previously unavailable. To the extent the Employer excepts to the Hearing Officer's credibility findings, the Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence shows they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). I have carefully examined the record and I am not persuaded that the Hearing Officer's credibility findings are incorrect. Moreover, even assuming the truth of the facts asserted by the Employer in its exceptions, the evidence submitted does not clearly establish that the Notice of Election was posted for three full working days prior to the election and that the

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<sup>3</sup> I note that the petition appears to indicate that employees saw the Notice of Election posted on December 3, 2019 and does not specifically state that the Notice of Election remained posted continuously until the election was over or that employees saw the Notice of Election near the time clock posted on December 6, 2019, the day of the election.

<sup>44</sup> It is noted that such evidence does not disprove Clark's testimony that he did not see the Notice of Election posted near the time clock on December 6, 2019 before the election.

election notice remained posted until the end of the election in compliance with the Board's Rules and Regulations Sections 102.62(e) and 102.67(k).

Accordingly, I agree that the record provided sufficient evidence to show that the election notices were not posted in compliance with the Board's Rules and Regulations, Sections 102.62(e) and 102.67(k).

### **RULING ON OBJECTIONS**

Based on the above and having carefully reviewed the entire record, the Hearing Officer's Report and Recommendations, and the exceptions filed by the Employer, I sustain the Petitioner's second objection.<sup>5</sup>

IT IS HEREBY ORDERED that the election conducted on December 6, 2019 is set aside and a new election shall be conducted.

### **DIRECTION OF SECOND ELECTION**

The National Labor Relations Board will conduct a second secret ballot election among the employees in the same unit as in the first election. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Special and Superior Officers Benevolent Association. The date, time and place of the election will be specified in the Notice of Second Election that will issue on a date to be determined. That Notice shall also contain the following language:

### **NOTICE TO ALL VOTERS**

The election conducted on December 6, 2019 was set aside because the National Labor Relations Board found that certain conduct of the Employer (its failure to properly post the Notices of Election) interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with

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<sup>5</sup> I note that the Employer did not file a statement that it served its exceptions on the other parties as required by Section 102.69(c)(1)(iii) of the Board's Rules and Regulations. On March 5, 2020, the Region was advised by the Union that it had not been served with a copy of the Employer's exceptions. It is noted that pursuant to General Counsel Memorandum 20-01, "Electronic Filing of Documents," the General Counsel directed all offices to accept documents submitted in connection with unfair labor practice or representation cases only if the documents are submitted electronically using the Agency's E-Filing system, effective January 21, 2020. The Petitioner's communication was not e-filed, and the Petitioner did not e-file any request to reject the Employer's exceptions. Inasmuch as I have sustained the Petitioner's objection, I find the Employer's failure to serve its appeal on the Petitioner has not prejudiced the Petitioner.

the terms of this Notice of Second Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

Eligible to vote in the second election are those employees in the unit who were employed during the payroll period ending immediately before the date of this Decision and Direction of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the date of the first election, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced.

### **Voter List**

The Employer must provide the Regional Director and parties named in the decision an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. The Employer must electronically file the list with the Regional Director and electronically serve the list on the other parties.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **March 20, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.** The Employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **Notice Posting**

The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. on the day of the election and must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. three days prior to the scheduled election**. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is stopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

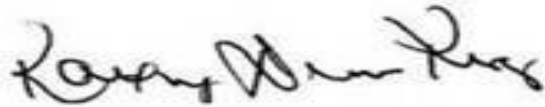
### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision, which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and may be filed at any time following this decision until 14 days after a final disposition of the proceeding by the regional director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review must be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents,

enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: March 18, 2020

A handwritten signature in black ink, appearing to read "Kathy Drew King", is positioned above a horizontal line.

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Kathy Drew King  
Regional Director, Region 29  
National Labor Relations Board  
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